

Remarks

The Applicants note the objection to Claim 5 with respect to multiple dependencies. Claim 5 has been amended so that it solely depend on Claim 1. Withdrawal of the objection is respectfully requested.

The Applicants note the rejection of Claims 5-10 under 35 U.S.C. §112. The Applicants also note with appreciation the Examiner's helpful suggestion with respect to appropriate corrections. Those corrections have been adapted and all of Claims 5-10 have been amended accordingly. Withdrawal of the rejection is respectfully requested.

The Applicants note the rejection of Claim 21 under 35 U.S.C. §112. Claim 21 has been cancelled, thereby rendering that rejection moot. Withdrawal is respectfully requested.

The Applicants note the rejection of Claims 18-20 under 35 U.S.C. §112. Claim 18-20 have been cancelled, thereby rendering that rejection moot. Withdrawal is respectfully requested.

The Applicants note the rejection of Claims 1-11 and 17 for non-statutory obviousness-type double patenting over Claims 1-3 and 5-13 of U.S. Patent No. 6,407,096. The Applicants also note with appreciation the Examiner's detailed comments theoretically applying Claims 1-3 and 5-13 of the '096 patent to Claims 1-11 and 17. The Applicants respectfully submit that Claims 1-11 and 17 are in no way obvious over Claims 1-3 and 5-13 of the '096 patent for the reasons previously set forth. Nonetheless, the Applicants respectfully submit that there are additional reasons as demonstrated below.

The Applicants have considered the Examiner's comments as noted above and the Examiner's suggestion with respect to showing unexpected results under oath. The Applicants accordingly enclose a Declaration of Dr. Michihiro Ohno, a co-inventor herein. The Applicants note that Dr. Ohno is also a co-inventor of the '096 patent and is accordingly quite familiar with both the subject matter of this application and the subject matter of the '096 patent.

The enclosed Declaration includes results from a variety of experiments that were run as described in the Declaration with respect to platelet aggregation inhibitory effect. Dr. Ohno took 31 examples from this application and compared them to Examples 21 and 32 from the '096 patent. The Applicants note that the compound of Example 32 of the '096 patent includes an amide structure and is particularly similar to the claimed benzomorpholine derivatives or pharmaceutically acceptable salts thereof. In any event, reference to the table attached to Dr. Ohno's Declaration shows that the platelet aggregation inhibitory effect in nM ranges from between 5.1 – 88 nM. This is

sharply and quite surprisingly contrasted to the 1,800 nM and >100,000 nM of Examples 21 and 32, respectively, of the '096 patent.

These differences are not only sharp, but different by more than an order of magnitude. In other words, the gap between the effects of the 31 compounds taken from the Applicants' Specification and Example 21 of the '096 patent (the lowest of the two examples from the '096 patent) is more than 20 times different in effect. The Applicants respectfully submit that if one skilled in the art were to look to the '096 patent, one skilled in the art would have no reasonable expectation that the effect of the platelet aggregation inhibitory effects would be in the range of the 31 examples between 5.1 and 88 nM. The Applicants respectfully submit that one skilled in the art would have no reasonable expectation that the platelet aggregation inhibitory effects would be in that range based on the disclosure and teachings of the '096 patent. The Applicants therefore respectfully submit that they have demonstrated on a factual basis and under oath that the claimed compounds are quite unexpectedly different from the disclosure of the '096 patent. As a consequence, the Applicants respectfully submit that Claims 1-11 and 17 are easily patentable over Claims 1-3 and 5-13 of the '096 patent. Withdrawal of the double patenting rejection is respectfully requested.

In light of the foregoing, the Applicants respectfully submit that the entire application is now in condition for allowance, which is respectfully requested.

Respectfully submitted,



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